IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 194 OF 1994

Smt.Eugenia Rana,
wife of Dr.Balchandra Rana,
major in age, married, housewife,
residing at Rana Street, Nani Daman,
Daman. ...Appellant

V/s.

1. Smt.Hirabai Hiralal Rana,
widow of Hiralal Rana,
major in age, housewife,
resident of Krishnakunj,
Nani, Daman.

1(a) Smt.Champaben Dhiraj Rana,
1(b) Smt.Niranjans V. Rana,
1(c) Miss Jagrutiben V. Rana,
1(d) Master Neki V. Rana,
1(e) Mr.Ashwin Hiralal Rana,
1(f) Smt.Lucy Ashwin Rana,
1(g) Mr.Dharmendra Ramesh Rana,
1(h) Smt.Sunita Dharmendra Rana,
1(i) Mr.Kamlesh Ramesh Rana,
1(j) Smt.Sadhana Kamlesh Rana,

1(a) to 1(j) are the Legal heirs of the Respondent No.1, are already on record being the Respondents No.3 to 12 respectively.

2. Dhiraji Hiralal Rana,
son of Hiralal Rana,
major in age, businessman,
resident of Krishnakunj,
Nani Daman.

2(a) Mr.Jitendra Dhiraj Rana,
2(b) Miss Arti Dhiraj Rana,
2(c) Mrs.Sejal Bipin Rane,

2(a) to 2(c) are r/a Krishna Kunj, opp. Hotel Showrne, Nani Daman, Vapi 2(c) married daughter of Respondent No.2 presently residing at Canada.

)
2(d) Smt.Champaben Dhiraj Rana,)
W/o Respondent No.2 r/a Krishna)
Kunj, Opp.Hotel Showrne, Nani Daman,)
Vapi already on record as Respondent)
No.3.)
)
3. Smt.Champaben Dhiraj Rana,)
wife of the respondent No.2,)
major in age, housewife,)
resident of Krishnakunj,)
Nani Daman.)
)
4. Smt.Niranjana V. Rana,)
widow of Vasant Hiralal Rana,)
major in age, housewife,)
residing at Krishnakunj,)
Nani Daman.)
)
5. Miss. Jagrutiben V. Rana,)
daughter of Vasant H. Rana,)
major in age, student,)
residing at Krishnakunj,)
Nani Daman.)
)
6. Master Neki V. Rana,)
son of late Vasant H. Rana,)
minor, student, residing at)
Krishnakunj, Nani Daman,)
represented by the Curador)
Bepinchandra Narsinhabhai)
Ghadialli,)
businessman, resident of)
Kathenia, Nani Daman.)
)
7. Mr.Ashwin Hiralal Rana,)
son of Hiralal Rana,)
major in age, businessman,)
residing near Krishnakunj,)
Nani Daman.)
)
8. Smt.Lucy Ashwin Rana,)
wife of the respondent No.7,)
residing near Krishnakunj,)
Nani Daman.)
)
9. Dharmendra Ramesh Rana,)
son of Ramesh Rana, major in)
age, resident of Krishnakunj,)
Daman.)

)
10. Smt.Sunita Dharmendra Rana,)
wife of Dharmendra Rana housewife)
major in age, resident of)
Krishnakunj, Daman.)
)
11. Kamlesh Ramesh Rana, son of)
Ramesh Rana, major in age,)
resident of Krishnakunj,)
Daman.)
)
12. Smt.Sadhana Kamlesh Rana,)
wife of Kamlesh Rana, major in)
age, resident of Krishnakunj,)
Daman.)
)
13. Thakorbhai Hargovandas Rana,)
son of Hargovandas Rana,)
major in age, businessman,)
residing at Rana Street,)
Daman.)
)
14. Smt.Gulabben Thakorbhai Rana,)
wife of Thakorbhai Rana, major)
in age, housewife, residing at)
Rana Street, Daman.)
)
15. Smt.Maniben Bhaghubhai Rana,)
widow of Bhagubhai Rana,)
major in age, housewife,)
residing at Tarapur, via Boiser,)
Thane District.)
)
16. Naresh Bhagubai Rana,)
son of Bhagubai Rana,)
major in age, married,)
businessman, residing at Tarapur,)
via-Boiser, Thane Dist.)
)
17. Ramilaben Naginbhai Rana,)
daughter of Naginbhai Rana,)
major in age, housewife,)
residing at Ambika Saw Mills,)
Palghar, Thane District.)
)
18. Kumudben Naginbhai Rana,)
daughter of Naginbhai Rana,)
major in age, household,)
residing at Ambika Saw Mills,)
Palghar, Thane District.)

)

19. Jagrutiben Naginbhai Rana,)
daughter of Naginbhai Rana,)
major in age, household,)
residing at Ambika Saw Mills,)
residing at Ambika Saw Mills,)
Palghar, Thane Dist.)
)

20. Sangeetaben Naginbhai Rana,)
daughter of Naginbhai Rana,)
major in age, household,)
residing at Ambika Mills,)
Palghar, Thane District.)
)

21. Chhotubai Chunilal Rana,)
son of Chunilal Rana,)
major in age, businessman,)
residing at Ramwadi, Valsad.)
)

22. Smt. Taraben Chhotubai Rana,)
wife of the respondent No.16,)
housewife, major in age,)
resident of Ramwadi, Valsad.)
)

23. Shri Vasantbhai Chunilal Rana,)
son of Chunilal Rana,)
major in age, resident of)
Chinchan, Tarapore, Thane)
Dist.)
)

24. Smt.Prabhaben Vassantbhai Rana,)
wife of Shri Vasantbhai Rana,)
major in age, housewife,)
residing at Chinchan, Tarapore,)
Thane Dist.)
)

25. Shri Devendra Chunilal Rana,)
son of Chunilal Rana, major)
in age, service, residing at)
Tarapore, Thane Dist.)
)

26. Shri Manharlal Chunilal Rana,)
son of Chunilal Rana, Major)
in age, businessman, resident)
Ambika Rice Mills, Boiser,)
Thane Dist.)
)

27. Dr.Manilal Chunilal Rana,)
son of Chunilal Rana,)
major in age, Ayurvedic)

Physician, residing at Dixit)
Chawl, Dhobi Ghat, Wakola)
Bridge, Santacruz,)
Bombay - 400 055.)
)
28. Smt.Bikiben Sukanand Rana,)
major in age, housewife,)
resident of Chevlisheri,)
widow of Chaganlal Rana.)
)
29. Shri Ishwarlal Chhaganlal Rana,)
son of Chaganlal Rana,)
major in age, service, residing)
at Rana Street, Nani Daman.)
)
30. Smt.Bhanuben Ishwarlal Rana,)
wife of the Respondent No.29,)
residing at Rana Street,)
Nani Daman.)
)
31. Shri Ramniklal Maganlal Rana,)
major in age, businessman,)
Cebeca-de-casal, residing)
at Rana Street, Nani Daman.)
)
31(a) Mahendrakumar Ramniklal Rana,)
(b) Sangeeta Mahendrakumar Rana,)
(c) Devendrakumar Ramniklal Rana,)
(d) Kalpana Devendrakumar Rana,)
)
all LRs of Respdt.No.31 since deceased)
r/a Prabhu Falia, Samall Daman, Daman.)
)
32. Smt.Maniben Ramniklal Rana,)
wife of the Respondent No.31,)
major in age, housewife,)
residing at Rana Stret,)
Nani Daman.)
)
33. Dr.Balchandra M. Rana,)
son of Mr.Maganlal Rana,)
major in age, surgeon,)
residing at Nani Daman.) ...Respondents

Shri Joaquim Reis with Rajesh Kachare for Appellant.

Mrs.Teja Katdare for Respondent Nos.1 to 12, 16 to 19.

Mr.G.S. Godbole for Respondent No.33.

CORAM : A.M. KHANWILKAR, J.

DATED : JULY 25, 2006

ORAL JUDGMENT :-

. This Appeal from Order takes exception to the Judgment and Order passed by the Civil Judge, Senior Division at Daman dated November 22, 1993 below objection dated 21st October, 1987 (26.10.1987) by appellant herein in Inventory Proceeding No.36/72 (Panji Court), later transferred and registered as Inventory Proceeding No.3/1991 pending in the Court of Civil Judge, Senior Division at Daman.

2. Briefly stated one Lalchand was residing at Daman alongwith his wife Arcur. They had four sons Hargovandas, Chaganlal, Chunilal and Maganlal. The appellant, who had filed the subject objection, is the wife of Dr.Balchandra Rana-the son of Maganlal. Lalchand left behind the properties, which are situated in Daman. Lalchand also left behind registered Will dated 21st November, 1957. Lalchand died in 1959. The

question as to whether each of the descendant of Lalchand would share proportionate property, will be relevant in the inventory proceeding which is still pending. What is necessary for the purpose of deciding the present appeal is to straight away consider the objection taken by the appellant before the lower court.

3. According to the appellant, Lalchand was not citizen of Daman the then Portuguese India and as such his property was not amenable to process under the Portuguese Civil Code. It is the case of the appellant that Lalchand was national of British India and his property was governed by the provisions of the Indian Succession Act. The lower court has considered this objection and answered the same against the appellant on the finding that admittedly, deceased Lalchand was residing at Daman for a long time for about 70 years. It is further found that he had business in Daman. Even the brothers of Lalchand were doing business at Daman. The brothers separated and partition was effected with regard to the business in 1922. The Court has then noted that the Birth certificate which is on record,

supports the case that deceased Lalchand was born in Nani Daman. On the above findings, the Court proceeded to answer the objection against the appellant. Indeed, the lower court has adverted to the contents of the Will which mentions that Lalchand was citizen of Tarapur but proceeded to hold that there was no record to show that Lalchand was born at Tarapur or born at Daman. On such finding, the Court below proceeded to hold that as Lalchand was resident of Daman for a sufficiently long time for over 70 years, it presupposes that he was citizen of Portuguese India to be governed by Portuguese Civil Code. The correctness of this view taken by the lower Court is in issue in the present appeal.

4. Having considered the rival submissions and going through the relevant provisions of the Family Laws of Goa, Daman and Diu, we will have to straight away advert to the provisions contained in Article 18 below Title II which reads thus :-

"TITLE II"

As to how the capacity of portuguese citizen is acquired

ARTICLE 18

(Acquisition of portuguese nationality)

Following are the portuguese citizens:

1. Those who are born in the portuguese territory, the father being portuguese citizen, or the mother being portuguese citizen in respect of illegitimate issues;

2. Those who are born in the portuguese territory the father being a foreigner, save where they declare, themselves, being major or emancipated, or through their legal representatives, being minor, that they do not want to become portuguese citizens;

3. The issues of portuguese father, though expelled from portuguese territory and illegitimate issues of portuguese mother, born in the foreign country who come to establish domicile in portuguese territory, or who declare themselves, being major or emancipated, or through their legal representatives, being minor, that they want to become portuguese citizens;

4. Those who are born in the portuguese territory of unknown parents or of unknown nationality;

5. Those who are born in foreign territory, the father being portuguese citizen, who resides therein and renders service to the portuguese nation;

6. A woman of foreign citizenship who gets married to a portuguese citizen;

7. Foreigners who have been given certificate of naturalization.

1st Paragraph: The declaration prescribed by the second clause shall be made before municipality of the respective residence, and that prescribed by the third clause shall be made before respective portuguese consular agents or competent foreign authority.

2nd Paragraph: The minor, after attaining majority or being emancipated, may by way of new declaration object to the declaration which, during his minority, was made by his legal representative, in accordance with the second clause.

3rd Paragraph: A portuguese citizen who eventually is deemed as national of other country, as long as he resides in such country, is debarred from claiming portuguese citizenship."

5. It will be also useful to refer to Article 19 which deals with requirements for grant of certificate for naturalisation which reads thus :-

ARTICLE 19

(Requirements to grant certificate of naturalisation)

. The Government may grant certificate of naturalization to the foreigners who so apply to the municipality of their residence, provided they satisfy the following conditions:

1. They are major or deemed as major, as per portuguese law and of their country as well;

2. They are able to earn salary with their

labour or are having other means of subsistence;

3. They have resided at least for three years in portuguese territory;

4. There are no criminal proceedings against them;

5. They have fulfilled the law of recruitment of their own country.

1st Paragraph: The signature in the application referred to in this article requires to be authenticated.

2nd Paragraph: The third condition is not essential to the descendants of portuguese blood who have come to be domiciled at Portugal and may be dispensed with in case of a foreigner married to a portuguese wife, and to those who have rendered or have been called to render any relevant service to the Nation may justice the exemption.

3rd Paragraph: The fourth condition is proved by the certificate of the country of the origin of the foreigner who applies for naturalisation and by the certificate of criminal record at Portugal.

4th Paragraph: Besides documents mentioned above, only those which may be prescribed by treaty or convention between Portugal and the country of the person who applies for naturalisation may be demanded.

5th Paragraph: The documents are not subject to law of stamp duty and the Government may dispense them and substitute them by other information supplied by competent institutions, authorities and functionaries.

6. Article 21 under the same Title II provides for manner of registration of certificate of naturalisation.

ARTICLE 21

(Registration of certificate of naturalization)

The certificate of naturalisation shall have effect only when they are registered within the period of six months, from the date of the grant, in the records of the municipality of the taluka where the foreigner has established his domicile."

7. On conjoint reading of the above provisions, it leaves no manner of doubt that to be a national or Portuguese citizen, a person should necessarily be either born in the Portuguese territory or has acquired that status by virtue of issuance of certificate of naturalisation and its registration. There is no other mode of acquiring citizenship of Portuguese India. This position can be discerned from Articles 18(1) to (5) referred to above. Clause 6 of Article 18 provides for acquisition of citizenship by a women of foreign citizenship who gets married to the Portuguese citizen. Clause 7 deals with procedure to be adopted by the

foreigners who have been issued certificate of naturalisation. The procedure for grant of certificate of naturalisation is spelt out in Article 19. Article 21 makes provision as to when the domicile of a foreigner is established after the registration of certificate of naturalisation is granted. The language of opening part of Article 19 abundantly makes it clear that a person who intends to acquire certificate of naturalisation, "himself" has to apply to the concerned municipality. On such application, after following necessary procedure and upon completing all the formalities, registration of certificate of naturalisation is granted. It is only on issuance of certificate of naturalisation and registration thereof as per Article 21, it is possible to assume that the person has acquired citizenship or a foreigner has established his domicile in Portuguese India.

8. In the present case, however, as is noted earlier, the lower court proceeded to answer the objection taken by the appellant essentially on the reasoning that deceased Lalchand was residing in Daman

for last 70 years and also possessed Birth Certificate which indicated that he was born in Nani Daman. If that was the only document available on record at this stage of the proceedings, perhaps the finding reached by the lower Court could have been accepted as it is. However, there is something more that emerges from the record. It is seen that the registered Will expressly states that deceased Lalchand was native of village Tarapur and domiciled in Daman. The lower Court has also noted that it is not clear from the available evidence as to whether the place of birth of deceased Lalchand was Tarapur (which was not part of Portuguese India) or Daman. Indeed, Counsel for the appellant also invited my attention to the discrepancy about the factum of place of birth of Lalchand in the two registered documents and the discrepancy about the fact that the Birth certificate is purportedly signed by Lalchand in English whereas in the registered Will, it is clearly noted that Lalchand was familiar with Gujarati only and was habitually speaking Gujarati. It is not necessary for me to dwell upon those aspects.

9. What is relevant for our purpose is that, there is no clarity or certainty about the factum of place of birth of deceased Lalchand. In such a case, the factum of place of birth will have to be established by adducing tangible evidence to substantiate the same. If it were to be established that the deceased was born in Daman, in that case, subject to provisions of Article 18, it can be assumed that he had acquired citizenship of Portuguese India. The only other way of acquiring citizenship or domicile of Portuguese India is by obtaining certificate of naturalisation in terms of Article 18(7) read with Articles 19 and Article 21. If there is no certificate of naturalistion issued or registered as is required by law. Mere fact that Lalchand stayed in Daman for several years cannot be the basis to assume that he had become citizen or domicile of Portuguese India. This is so because from the aforesaid provisions, it is amply clear that there are only two modes of acquiring Portuguese citizenship or domicile. One is by birth and the other on issuance of certificate of naturalisation and its registration. It will be therefore imperative in the inventory

proceedings to address this issue, as it will go to the root of the matter. In the event, after the parties adduce evidence in support of their respective case to establish the factum of birth or issuance of certificate of naturalisation and its registration as the case may be and upon a positive finding returned in that behalf, it will be possible to hold that Lalchand was Portuguese citizen. On the other hand, if the finding, on analysis of evidence to be produced by the parties, was to be that Lalchand was only resident of Daman for several years without acquiring certificate of naturalisation and its registration, in that case, the properties of Lalchand will not be governed by the procedure provided for under the Portuguese Civil Code and his descendants will have to take recourse to some other appropriate remedy as may be permissible by Law.

10. Suffice it to observe that in the fact situation of the present case, it is necessary for the parties to adduce evidence to establish the relevant fact of place of birth or issuance of certificate of naturalisation and its registration as the case may be, as there is

discrepancy about the factum of place of birth of Lalchand in the two registered documents as presently available in the form of registered Will and registered Birth certificate. The discrepancy will have to be explained and appropriate evidence to establish the factum of place of birth or issuance of certificate of naturalisation and its registration will have to be adduced by the respective parties.

11. Accordingly, the Judgement under appeal will have to be set aside and the parties will have to be relegated before the lower court for reconsideration of the objection taken by the appellant on the basis of observations made in this judgment.

12. Accordingly, this appeal is allowed. The impugned judgment and order is set aside. Instead, the objection dated 21.10.87 (26.10.87) filed by the appellant in Inventory Proceedings now registered as I.P. No.3/91 pending before Civil Judge, Senior Division, Daman, is restored to the file of that court to its original number to be proceeded further in

accordance with law in terms of the observations made in this judgment. All questions relevant for deciding the point in issue are kept open. The same will have to be decided afresh after permitting the parties to adduce evidence in support of their respective case.

13. While parting it is made clear that I have not dealt with the efficacy of the Agravo of Respondent 33 in this Judgment, which was filed by the said Respondent after the order was passed on his objection on 28th July, 1973. It is argued that the said Agravo is still pending. Whether the same or any other Agravo is still pending and can be treated as appeal to be heard by this Court if occasion arises in future; in terms of decision of the Supreme Court in the case of **Maria Christine De Souza Soddar and others v. Maria Zurna Pereira Pinto and others reported in AIR 1979 Supreme Court 1352**, that issue is kept open.

. Appeal and the accompanying Civil Application disposed of on the above terms.

(A.M. KHANWILKAR, J.)